

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

Affordability, Real Estate Law, and Mortgages Work Group July 16, 2013, 10:00 AM House Room D, General Assembly Building

I. Call to Order - Affordability, Real Estate Law, and Mortgages Work Group

Delegate Danny Marshall, *Chair*, called the meeting to order at 10:07 AM.

Work Group members in attendance: Delegate Rosalyn Dance; Delegate Barry Knight; Senator Mamie Locke; Senator George Barker; Mark Flynn, *Governor Appointee/Virginia Municipal League*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Steve Baugher, *Virginia Association Mortgage Brokers*; Paul Brennan, *Virginia Housing Development Authority*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; J.G. Carter, *SunTrust*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Andrew M. Friedman, *Virginia Beach Dept. Housing & Neighborhood Preservation*; Kelly Harris-Braxton, *Virginia First Cities*; Shea Hollifield, *Dept. of Housing and Community Development*; Kelly King Horne, *Homeward*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Alexander Macaulay, *CitiGroup*; R. Schaefer Oglesby, *Virginia Association of Realtors*; Renee Pulliam, *Virginia Apartment Management Association*; Michael Toalson, *Home Builders Association of Virginia*; William Walton, *Real Property, Inc.*; Michele Watson, *Virginia Housing Development Authority*; Cal Whitehead, *Whitehead Consulting*.

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Discussion: Source of Income; Relating to the Virginia Fair Housing Law (SB 1224, M. Locke, 2013)

- **Senator Mamie Locke:** Senate Bill 1224 was drawn under Virginia Fair Housing Law and it would add lawful source of income to the list of unlawful discriminatory housing practices. I think this issue needs broad and balanced views for the workgroup to draw some conclusions.
- **Lizbeth Hayes, Virginia Fair Housing Office, DPOR:** Our agency does not maintain any statistics on complaints on source of income. A large number of our complaints are referred from the Department of Housing and Urban Development, where they have already completed a thorough intake process. We track complaints based on Covered

Protected Classes that may also include an allegation involving source of income if it was filed with our agency.

- Typically, these complaints will be processed on disability because the client is alleging some unfair treatment. Occasionally, we receive complaints based on retirement income, where it is generally processed based on elderliness because it is a covered class under state law.
- There are 13 states already that include source of income as a protected class, but we do not have any jurisdictions in our state that do.
- Generally, findings will be mixed between no cause, reasonable cause, and resolved by mediation or reconciliation.
- **Christie Marra, Virginia Poverty Law Center:** This proposed bill would impact a large range of people. A number of those individuals are already protected under the Virginia Fair Housing Law, either under the portion on disability or discrimination based on elderliness.
 - One of the major changes would include protection for people who receive rental subsidies. For the most part, that will mean a Housing Choice voucher, which were designed to deconcentrate poverty by providing people receiving vouchers more mobility. In order to qualify, you are vetting through an application process, to ensure you pass certain check, like a criminal background check. However, waiting lists for these vouchers can extremely long and close for many years.
 - The use of these vouchers is very concentrated. The main reason for the creation of this program is to give financially stressed people a subsidy that is not tied to a particular unit or conventional public housing. It gives more mobility.
 - Many landlords in low poverty, high opportunity areas do not accept renters with these vouchers, so people with the vouchers are often forced to remain in high poverty areas.
 - Living in poverty has negative impacts like youth crime, poor health outcomes, and limited access to employment.
- **Marra:** This bill will prohibit landlords from refusing to rent to someone based solely on their source of funds by adding protections based on source of funds to the Virginia Fair Housing law. Source of funds includes child support, wages, social security, public assistance and housing subsidies. One exception is if the tenancy is not approved by the Housing Authority within 10 days of the landlord's approval of the tenant, the landlord is not obligated to rent the unit to that tenant.
 - Landlords will continue to have the right to do the following checks on prospective tenants: credit check, criminal records check, and references from prior landlords. SB 1224 does NOT prohibit landlords from refusing to rent based on poor credit, bad references or criminal records.
 - The tenant applies for voucher at local housing authority. If approved, housing authority issues 60 day search voucher. The tenant will find a landlord willing to accept voucher and tenant, providing the tenant passes all checks. The landlord will send the housing authority request for approval of tenancy. This is where there may

be a delay as this approval is based on the landlord's property passing the Housing Quality Standards (HQS), to ensure the unit is safe and habitable. Then the housing authority will approve tenancy, and the landlord and housing authority will sign the Housing Assistance Payment contract. The landlord and tenant will sign lease, and the tenant will pay the security deposit. The tenant will pay a portion of rent (30% of income), and the housing authority pays balance directly to landlord.

- **Marshall:** How does an individual apply for the Housing Voucher Program?
 - **Marra:** Each locality will have a different organization to provide these vouchers. Most of the time, you have to put your name on a waiting list. Once your name comes up on the list, you fill out an application. In most places they are limiting vouchers to those that fall under the very low income, which is 30% of median income or less. There are other checks to go through as well
- **Marshall:** Do you list the number of dependents on the application?
 - **Marra:** I believe they mainly look at income, but the number of dependents that you have determines the size of the unit for which you qualify, which in term determines the amount of your subsidy.
- **Senator George Barker:** What is the rationale for requiring someone to approve tenancy? If the individual has a voucher and somewhere they wish to live, why would the housing authority not approve the unit, and allow them to live there?
 - **Marra:** That is a federal requirement. My understanding of the rationale is that the federal government wants to ensure it is safe.
- **Renee Pulliam:** You stated that there is an exception if the housing authority does not approve the tenancy within 10 days. In the draft language, I see the exception stated at 14 days. Which is correct?
 - **Marra:** I apologize. I forgot the number was 14, as we had discussed 10 days as an alternative.
- **Marra:** HQS requires: operational bathrooms; place to prepare, store and serve food; space and security must be adequate for family; heat; if unit has AC it must work; adequate light and working electrical outlets; structure and materials must be sound; interior air free of hazardous pollutants; water supply free of contamination; compliance with federal law on lead-based paint; access to unit; safe and sanitary site and conditions; working smoke detectors on each floor. All of these are very reasonable.
 - Over 43,000 households in Virginia receive tenant-based vouchers, with 20% going to elderly people, and with 42% going to disabled people, and with 50% going to households that include at least one minor child. 75% of the non-elderly, non-disabled people receiving vouchers are employed.
- **Marshall:** Can you e-mail those statistics to the group? Have it broken down by locality?
 - **Marra:** I believe I can get that information for you. Connecticut, Maine, Massachusetts, New Jersey, North Dakota, Oklahoma, Oregon (to become effective July 2014), Vermont, counties in Maryland (Frederick, Howard, Montgomery, Prince Georges) and Memphis Tennessee already have Source of Funds laws.

- **Pulliam:** You mentioned the closed and long waiting list. What are the reasons for these waitlists being closed? Is it due to lack of funds from HUD?
 - **Marra:** That is correct. There are not enough vouchers being provided or enough funds. There are some localities that have local rental subsidies. Some states have state rental subsidies that provide additional support.
- **Pulliam:** Is there currently a limit on how long a person can have a voucher if it is meant to be temporary?
 - **Marra:** There is currently no limit, but there is discussion on limiting it to five years.
- **Brian Koziol, *Housing Opportunities Made Equal*:** I will show the geographic distribution of housing vouchers across the state, and in some major urban areas. The highest percent of households with vouchers live in census tracts with 7%-15% poverty.
- **Barker:** I assume those households in areas with less than 7% poverty mainly single-family households. These households' rental prices would be above what the maximum would be under the HCV system.
 - **Koziol:** Yes, there are some market barriers.
- **Koziol:** There is a concentration of Housing Choice Vouchers in the urban Richmond area, mainly in higher poverty census tracts. We see the same trend with the overall percentage of households, but there is a spike in HCS in census tracts with poverty between 25%-50%.
- **Barker:** Does the property owned by Richmond Redevelopment and Housing Authority (RRHA) affect the distribution of vouchers in the city of Richmond, or are those HCV being given to non-RRHA properties.
 - **Koziol:** Mainly, they are given to non-RRHA owned properties.
- **Koziol:** In Hampton Roads, we see the same general distribution, with HCV's in the highest poverty census tracts. We again see the same trend with overall percentage of households, and an overrepresentation of HCV's in all areas with poverty rates 7% and higher.
 - In Northern Virginia, it is less obvious, but there are definite concentrations of HCV's in certain areas. Northern Virginia is relatively better off, and poverty is rather evenly distributed. We see 74% of households live in census tracts of less than 7% poverty, but we still see overrepresentation of HCV's within neighborhoods of greater than 7% poverty.
- **Mark Flynn, *Governor Appointee/Virginia Municipal League*:** Of the distribution in Northern Virginia, there are three main blocks of high concentrations of HCV's. What are those areas?
 - **Barker:** One of those is Bailey's Crossroads. Another is in the Seven Corners area, and another is in the Annandale area. These all have large garden apartments with modest rents and are in older areas.

- **Flynn:** Are any of those in Alexandria?
 - **Barker:** No, all of those are in Fairfax County.
- **Chip Dicks, Virginia Association of Realtors:** On behalf of the Real Property Organizations of Virginia, I will explain my concerns about this legislation. Virginians are protective of the private property rights of its citizens. The effects of this legislation would be to mandate that every residential property owner in Virginia accept a certain statutory “lawful sources of income.”
 - This legislation would trump other laws and require those landlords to accept these sources of income as defined by the statute, regardless of whether those landlords wanted to use different financial criteria.
 - The legislation would provide that residential property owners’ failure to use these regulations correction would be a fair housing violation under Virginia Law. Penalties for a fair housing violation may include compensatory damages, punitive damages, up to \$50,000 civil penalty at the first violation, up to \$100,000 at the second, and any prevailing attorneys fees and costs. The consequences of being accused of a fair housing violation are significant.
 - The Real estate Board or the Fair Housing Board sets an administrative hearing on the complaints. If “reasonable cause” is determined, then the Attorney General is required to bring legal action against the named fair housing respondents, which can take a variety of forms.
 - What is a lawful source of income? Every professional real estate company supports the principles of the Fair Housing Law. The issue is whether the legislation as proposed and the policy behind it, and whether to expand the Fair Housing Law to include source of income as a protected class.
- **Dicks:** The categories of “sources of income” listed in the legislation include public assistance; gross income; Supplemental Security Income (SSI); child support; and any Federal, State or Local Housing Assistance.
 - Including child support as a “source of income” raises a question of whether a landlord can determine the reliability of the mandated “sources of income” without committing a fair housing violation. Is a landlord mandated to include back child support from a “deadbeat father” that is unlikely ever to be collected? With protected classes, the landlord cannot inquire to someone’s protected class status. What limits are there for a Realtor or landlord to ask about say child support or alimony?
 - The primary tenant based housing assistance is HUD Section 8 Housing Choice Vouchers. The federal laws and regulations are substantial, and the federal law trumps the state landlord tenant laws. Every property owner, property manager, and realtor would then be required to have a good working knowledge and property administer the HUD Section 8 program, or suffer a fair housing violation.
 - In addition, the realtor and/or property manager would likely be liable to their owner-clients for negligence and breach of the property management contracts for failure to properly administer the HUD Section 8 programs.

- I would be happy to answer any question the commission may have.
- **Barker:** Would your perspective be affected if the proposal were limited to things that are not temporary in terms of income?
 - **Dicks:** Our perspective is that those issues should be left to the landlord that is renting the property, to develop tenant selection criteria that includes financial criteria for those particular properties. It is important that the landlord retains the right because the landlord pays the mortgage. The Federal Fair Housing Law does not include source of income as a protected class. Eliminating the temporary types of public assistance would improve our perspective, but we oppose the legislation from a policy perspective.
- **Andrew Chisolm, *Multi-family Management, Drucker and Falk*:** Our company is an advocate for affordable housing, and manages in a large range of communities across the state. As a third party company, we would like to advise more of our owners to participate in the affordable housing program; however, the management of those programs has prevented many of those owners from becoming involved.
 - We are in the business of renting apartments, and would like to consider all reliable income to include social security, retirement, and disability. We want to rent to everyone who qualifies. If the HCV program works as described, then there may not be a program. However, the reality is the program with the Housing Authority is often broken.
 - The time between a tenant approaching a landlord and the move-in date in a unit can range between six to nine weeks. This whole time the apartment is off the market, which is not fair to the landlord or the resident.
 - During the voucher renewal process, there is another inspection. If there is a resident-caused issue, the onus and financial burden is on the landlord to have that issue resolved. In the meantime, payment from the voucher will be withheld until it is resolved.
- **Marshall:** Who is doing that inspection?
 - **Chisolm:** Our RHA.
- **Marshall:** Do they use a third party?
 - **Chisolm:** They perform the inspection themselves.
- **Chisolm:** There is also an issue with termination. Currently, with most conventional housing, if you want to terminate a lease at the end of the term, you can non-renew without cause. With this program, you cannot; you need a very good case to not renew.
 - This takes more than a property manager to administer these programs. It takes a property administrator for each property, depending on its size and number of vouchers, to avoid lawsuits. This is additional staff and additional financial burden to the property, which drives disrepair and may run the risk of blight in rare cases.
 - The administrative process is our largest concern. The vacancy cost during the application and inspection process is an issue.

- **Michele Watson:** You spoke of the inspection process. If there is a violation during re-inspection; the rent is abated until it is resolved. Do you have any experience with how long it takes for the inspector to “back out” after you have resolved the issue?
 - **Chisolm:** It can take two to three weeks. Over the years our RHA’s staffing has decreased, so I am sure that contributed to the problem.
- **Watson:** The tenant is occupying the unit throughout this process?
 - **Chisolm:** Correct.
- **Watson:** Is the tenant obligated to pay their portion during this process?
 - **Chisolm:** Yes, they are.
- **Lizbeth Hayes:** Could you elaborate on how funds are received at the property on a regular monthly basis?
 - **Chisolm:** Typically there is a large check written to the property with a stub that outlines how. That is also an administrative problem because often the checks do not match up to what the rent is supposed to be. There is an audit process along with the Housing Authority, which can be quite burdensome.
- **Hayes:** I would comment for the group that similar processes are in place at other Housing Authorities across the state. They are not consistent across the board. Overall, the federal law and regulations are to be administered the same, and that is challenging at the state level.
 - **Chisolm:** We are very much in favor of affordable housing and like the theory of the voucher program. However, the way it is currently working is not cost effective, and does not make good business sense for both the landlord and tenant.
- **Mike Toalson, Home Builders Association of Virginia (HBAV):** Often HBAV members have investments in the types of properties targeted by this program. Just to break even on those projects, they need to have the units 90% filled. To make a profit, the units need to be at least 95-97% occupancy. So why would they not be willing to accept these Section 8 vouchers? I believe this is because of the problems Mr. Dicks and Mr. Chisolm outlined.
 - I suggest to the workgroup and the advocates of this bill that perhaps they are in the wrong venue. We are all advocates of affordable housing, but we believe this is just a government mandate. We believe the correct venue is at the foot of the Housing Authorities that are administering the program that create the delays Mr. Chisolm mentioned. We should urge HUD to make their program more efficient for the Housing Authorities.
 - This would make landlords and property owners much more willing to accept these vouchers.
- **Ali Faruk, Housing Opportunities Made Equal:** We have some clients who were unable to make it. We videotaped their testimony and will play it for you now.

- The video detailed various Virginians and their difficulties and disappointments associated with their experience with the voucher program, including the long waiting periods and the landlords' unwillingness to accept tenants with the vouchers.
- **Kelly Harris -Braxton:** Is there statewide data on the turn-over rates of those 43,000 vouchers?
 - **Marra:** I can look into that.
- **Braxton:** On Mr. Koziol's slides, it looked like when you compare those households in low poverty census tracts, the metropolitan area in Northern Virginia had a much better dispersal rate because there was less overall concentration of poverty. Richmond was the starkest example that we saw, and Hampton Roads was a bit better. Does anyone understand why that is? Is it practices of the Housing Authority or the culture?
 - **Koziol:** There are many factors at play, and it is almost impossible to narrow it down to a few. Richmond's RHA is notoriously bad with handling the voucher program. Newport News had a bit more of an integrated housing pattern, and there seems to be more jurisdictional cooperation
- **Flynn:** Are the landlords concerned with where the rent money is coming from?
 - **Dicks:** The landlord community feels like this should be a business decision for the property manager. The acceptance of Section 8 affects a property's appraisal and subjects the property to a control agreement for restricted rents for a time. There are many variables and some banks and investors that will lend for non-Section 8 projects. Likewise, local governments regulate from a zoning standpoint and can create a zoning restriction that requires no Section 8 properties. This is a very complex issue, and the landlord concerns are in a number of areas.
- **Flynn:** The issue is: will the administrative burden and possible Fair Housing Law violations, correct?
 - **Dicks:** Yes, but the Housing Authorities have not been able to recruit private landlords to do deficiencies with the program because lenders will not fund housing communities with the Section 8 program.
- **Flynn:** There is no way to fix the risks associated with Section 8, correct?
 - **Dicks:** Yes.
- **Locke:** I put this forward to the Commission for discussion today. We need to see the consumers because they are the face of this issue. This is an issue that will not go away.
- **Marshall:** Do you want to create a sub-group to work through this?
 - **Locke:** Yes.
- **Marshall:** Then I ask you to put it together.

III. Public Comment

- **Delegate Marshall** asked for comment from the public.

IV. Adjourn

- Upon hearing no request for public comment, **Delegate Marshall** adjourned the meeting at 11:30 AM.